out a bundle which, when opened, contained housebreaking paraphernalia.

The evidence of Wong Kiew went further. He said that he saw the appellant bring out a knife, which was subsequently found on the premises stained with blood, from the bundle of housebreaking paraphernalia and at a later stage immediately before entry was effected the appellant handed it to the unknown Chinese. If that was true it was sufficient to make out that the appellant was guilty of murder because it made out that he had knowledge that a deadly weapon was in active circulation and it gave rise to the inference that it was intended to use that weapon if necessary.

There was one other piece of evidence. Some two days after the killing the relatives of the dead man had found on the premises a watch which they did not recognise as his and at the trial this watch was proved (by the evidence of Derani and Wong Kiew) to be the property of the appellant. This piece of evidence, however, was without importance because the appellant who gave evidence admitted that the watch was his and that on the night in question he had lost it.

His version of the affair as a whole was that he admitted participating in the robbery but said that Wong Kiew was the leader; that he had no idea that there was any intention of using violence; and that he was surprised when in the course of the struggle in the shop the unknown Chinese produced a knife and used it.

It is hardly necessary to say that in summing-up the case as it stood to the jury they should be given a clear and unequivocal warning and direction on the subject of accomplice evidence. And up to a point the trial Judge gave an adequate caution. He explained what an accomplice was. He explained why Derani and Wong Kiew were to be regarded as accomplices and he warned that if they were regarded as accomplices it would be unsafe to convict on their evidence alone unless it was corroborated in a material particular implicating the accused.

But then he said something which, in our view, amounted to a misdirection. What he said was this:—

"The finding of the wrist watch at the scene of the crime, if you are satisfied beyond reasonable doubt to be the property of the accused and that he was wearing it that morning is in my mind independent corroborative evidence and is a matter for your consideration as a question of fact."

In our view that direction was wrong. The crucial point in the whole case was the state of knowledge of the appellant. Did he know that among the paraphernalia there was a knife? There was no doubt as to his being present. That was fully admitted. The only question was the question of his knowledge and it is hardly necessary to observe that the finding of the watch had no bearing whatsoever on that crucial question.

It is one of the main reasons for distrusting the evidence of an accomplice that he knew so much about what has happened that he is able to furnish many truthful details that they give a spurious appearance of verisimilitude to the untruthful portions of his evidence. In the present case a great deal of what Derani and Wong Kiew said was undoubtedly true and was indeed admitted by the appellant. The real question was was the portion of the evidence that pointed to knowledge on the part of the appellant to be believed? It was on that point that corroboration of the evidence was necessary if the appellant was to be implicated and in our view it was wrong to suggest that such corroboration was to be found in the finding of the watch.

In the circumstances the conviction for murder cannot stand.

The question then arises what course this Court should take. A serious offence has been committed in the course of which a man has lost his life and though criminal responsibility for that loss cannot now be attributed to the appellant he certainly participated in a robbery.

We do not think that any useful purpose would be served by a retrial and in all the circumstances we propose to enter a conviction in contravention of section 457 of the Penal Code and impose a sentence of 14 years' imprisonment.

Order accordingly.

HAJI MUSA v. BAHAROM KHALID

[O.C.J. (Suffian J.) May 11, 1963]

[Alor Star — Civil Suit No. 144 of 1960]

Limitation—Purchase of land in 1943 when moratorium had commenced—Death of vendor before moratorium lifted—Whether claim limitation barred—Kedah Limitation Enactment No. 60, ss.22 and 32—Limitation Ordinance, 1953, s.9(1).

In 1943 when Kedah was under Siamese administration the plaintiff bought a piece of land from one Khalid, defendant's father, since deceased, and they executed an agreement under which one of the terms was that Khalid was to perfect the transfer in the plaintiff's favour only on there being no objection from the authorities. Khalid died in 1946. In 1959 the defendant was granted letters of administration to his father's estate. In 1960 the plaintiff filed this suit praying for an order that the defendant as administrator of the estate transfer the land concerned to him.

Held: (1) when the contract for the sale of land was made in 1943 the moratorium had commenced. Limitation did not therefore start to run until October 1, 1949

when the moratorium was lifted. But by that time the vendor had died and by reason of the Kedah Limitation Enactment No. 60, section 32, limitation did not run during the period during which service of a writ of summons could not be made upon the defendant;

(2) in this case the period of limitation which is 12 years ran from October 1, 1949. As this action was brought in October 1960, it was not therefore statute barred.

Case referred to:—

(1) *Ponnusamy* v. *Nathu Ram* [1959] M.L.J. 86.

CIVIL SUIT.

A. Jayadeva for the plaintiff.

Oo Gin Sun for the defendant.

Cur. Adv. Vult.

Suffian J.: The proved and admitted facts in this case are as follows. On 5th February 1943 when the State of Kedah was administered by the Siamese Government, the plaintiff bought a piece of land the subject of this suit from Khalid bin Haji Hashim, now deceased. On the same day they executed an agreement in Malay, the translation of which is as follows:—

"Bandar Bahru South (Kedah).

On 5th. 2-2487.

This agreement made between Khalid bin Haji Hashim (iand owner) and Haji Musa bin Haji Arshad both living at Permatang Pasir, Bandar Bahru district in respect of the undermentioned land:

On the above date, I, Khalid have received money in cash from the said Haji Musa the sum of $2,167 (two thousand one hundred and sixty-seven dollars) the full price of a piece of rubber land Surat Putus No. 4196 Portion No. 1067 area 5 relongs 054.00 in the Mukim of Bagan Semak in the locality of Bagan Semak. Whereas from the date hereof and as long as this agreement exists the possession of this land is given to Haji Musa and all the profits derived from the said land would go to Haji Musa. When there is no objection for effecting the transfer, then, I Khalid agree to effect the transfer or absolute sale in favour of Haji Musa for the sum of $2,167 the amount which I have received in full on this day. Should I fail to comply with the said agreement when it has been according to laws of the Government, that is, when the land has been transferred, then I agree to pay back to Haji Musa the sum of $4,334 (four thousand three hundred and thirty four dollars) and whatever income that Haji Musa had collected I would not claim at all.

All the expenses in respect of ownership or sale and land assessment shall be paid by Haji Musa alone. Such is the agreement agreed upon by both parties aforesaid who have signed hereunder in the presence of the said witnesses.

Sgd. Khalid bin Haji Hashim (in Malay)

„ Haji Musa bin Haji Arshad (in Malay)

„ Mat Dris bin Hashim, Witness (in Malay)

„ Bakar bin Lebai Salleh, Witness (in Malay)."

That day, apart from paying Khalid the purchase price in full, the plaintiff was also put into possession of the land and he has been in possession ever since.

During the time of the Siamese administration no land transaction could be perfected without Government permission. Hence the term in the agreement that Khalid was to perfect the transfer in favour of the plaintiff only on there being no objection from the authorities.

Khalid died some time in 1946. Before his death the plaintiff had asked him to perfect the transfer. After his death the plaintiff asked Khalid's father to perfect the transfer, and Khalid's father told him to wait.

Until today the transfer has not been perfected.

On the 16th December 1956 the plaintiff applied to the Land Officer under section 85 of the Kedah Land Enactment to have him registered as the proprietor of the land.

On the 26th May 1957 after an enquiry attended by both the plaintiff and the defendant, who is a son of the deceased, the Settlement Officer granted the plaintiff's application. Against this order the defendant appealed and on the 6th November 1957 Hill J., as he then was, allowed the appeal.

On the 19th May 1959 this Court granted Letters of Administration to the deceased's estate to the defendant and on the 12th October 1959 Letters of Administration were issued to him.

On the 5th day of October 1960 the plaintiff filed this suit praying for an order that the defendant as administrator of the deceased's estate transfer the land concerned to the plaintiff, and costs.

The only issue here is whether or not, as the defendant claims, this suit is statute barred.

The answer to this question would appear to be as follows.

When the contract for the sale of land was made in 1943 the moratorium had commenced by reason of the Limitation (Enemy Occupation) Ordinance No. 4 of 1946. Limitation did not therefore start to run until 1st October 1949, when the Moratorium Proclamation (Repeal) Ordinance No. 37 of 1949 lifted the moratorium. But by that time the vendor had died and by reason of the proviso to section 32 of the Kedah Limitation Enactment No. 60 which reads —

"When time has begun to run no subsequent disability to sue stops it, provided that the running of the time prescribed for any suit shall be suspended during any period during which service of a writ of summons cannot be made upon the defendant in any mode prescribed by law."

limitation did not run during any period during

which service of a writ of summons could not be made upon the defendant.

The Kedah Enactment which by section 22 thereof provided:

"No suit for the specific performance of a contract shall be brought after the expiration of three years to be calculated from the time fixed for the performance, or where no such time is fixed from the time when performance is demanded and refused."

was repealed by the Limitation Ordinance No. 4 of 1953 with effect from 19th February, 1953, and as at that time administration had not been taken out the Kedah Enactment had no application to the action.

The question, therefore, is what is the position under the Limitation Ordinance, 1953. On this see the Court of Appeal decision in *Ponnusam* v. *Nathu Ram*[1].

That Ordinance is based on the English Act of 1939 and in England once time starts to run it continues to run (see *Williams* on Executors, 14th edition page 1132).

The relevant provision of the Limitation Ordinance 1953 (section 9 (1)) reads as follows:—

"No action shall be brought by any person to recover land after the expiration of twelve years from the date on which the right of action accrued to him....."

So here time ran against the plaintiff from the date on which the right of action accrued. There is some difficulty in saying precisely when the right of action accrued, but it was certainly not later than the first occasion on which a demand was made for a transfer. But from then until 1st October, 1949, there was a moratorium. The answer, therefore, would seem to be that the appropriate period of limitation in this case, which is twelve years, ran from 1st October, 1949, when the moratorium was lifted. This action, having been brought on 5th October 1960, that is before the expiration of twelve years from the date on which the right of action accrued to the plaintiff, is not therefore statute barred.

Accordingly, I enter judgment for the plaintiff as follows:

(a) that the defendant do transfer the said land comprised in Grant Surat Putus No. 4196, Portion No. 1067 in the Mukim of Bagan Semak, Bandar Bahru, Kedah, to the plaintiff; failing his compliance, the Assistant Registrar of this Court be empowered to sign the transfer for and on behalf of the defendant; and

(b) costs.

Judgment for the plaintiff.

Solicitors:—*Jayadeva & Zahir; Chang Min Tat.*

K.V. PILLAI v. POWER FOAM RUBBER PRODUCTS (MFG) CO. LTD.

[O.C.J. (Gill J.) May 22, 1963]

[K.L. — Civil Suit No. 492 of 1962]

Master and Servant—Contract of service—Servant not required to work during first two months—Whether entitled to salary—Expiry of contract—Verbal renewal—Servant dismissed one month's notice—What is reasonable notice—Wrongful dismissal.

By a written contract of service, the defendants agreed to employ the plaintiff as their factory chemist and production manager for a period of one year from March 1, 1958 to February 28, 1959 at a salary of $800 per mensem. On or about March 7, 1958 the plaintiff, with the consent of the defendants, went to India and did not return until the first week of May. He was not paid his salary for March and April. The defendants' factory did not start operating until July 1958. Towards the end of March 1959 the original contract was renewed by verbal agreement for an indefinite period and the plaintiff continued to work for the defendants. On March 9, 1961 the plaintiff gave three months' notice of termination of his services with the defendants. On March 30 the plaintiff's services with the defendants were terminated by the defendants who paid him a month's salary in lieu of notice. The defendants alleged that the plaintiff had committed an act of disobedience in refusing a meeting when called to do so by the managing director. The plaintiff brought an action claiming salary for March and April 1958, holiday and leave pay, 5 months' salary in lieu of notice and return of his books.

Held: (1) where a written agreement, which appears on the face of it to include all the terms agreed to by the parties, provides only for payment of wages or salary at certain times, no obligation to find work for the servant will be added, but if he remains ready to perform his services during the period covered by his contract, he is entitled to the agreed wages; therefore the plaintiff was entitled to his salary for March and April 1958;

(2) there was no provision made in the contract for holiday and leave pay and accordingly the plaintiff is not entitled to any additional salary;

(3) a contract of employment for an unspecified period can be terminated by either side on reasonable notice;

(4) considering the type of work for which the plaintiff was employed and the period for which he had worked for the defendants, reasonable notice should be three months notice;

(5) a single act of disobedience will justify dismissal only if it shows that the servant is repudiating the contract or one of its essential terms. The act of disobedience in not attending the meeting was insufficient to justify the plaintiff's dismissal.

Cases referred to:—

(1) *Williamson* v. *Taylor* (1843) 5 Q.B. 175; 114 E. R. 1214.

(2) *Aspdin* v. *Austin* (1844) 5 Q.B. 671; 114 E.R. 1402.

(3) *Dunn* v. *Sayles* (1844) 5 Q.B. 685; 114 E.R. 1408.

(4) *Emmens* v. *Elderton* (1853) 4 H. L. Cas. 624, 650; 10 E.R. 606, 616.

(5) *Lagerwall* v. *Wilkinson, Henderson & Clarke Ltd.* (1899) 80 L.T. 55.

(6) *Turner* v. *Sawdon & Co.* [1901] 2 K.B. 653.